

Serial No.: 09/189,543  
Filed: November 10, 1998

### **ARGUMENTS/REMARKS**

Claims 37-55 are pending. Claims 48-50 are canceled. Claims 37-51 and 53 are rejected. Claims 52, 54 and 55 are allowed. Claims 37 and 51 are amended to recite "optical tag" in place of "label". Support is found at p. 22, lines 4-25, of the application as filed. Claim 53 is amended to properly depend from claims 52, 54 and 55. Claims 38 is rewritten in independent form. Claims 40, 44, 45, 46 and 47 are amended to depend both from claims 37 and 38. New claims 56-62 are added. Support is found in the claims as filed. No new matter is introduced by way of this amendment.

Applicants also draw the Examiner's attention to the Information Disclosure Statement and 1449 submitted herewith. In addition, Applicants draw the Examiner's attention to the IDS and PTO-1449 submitted April 29, 2003. Applicants respectfully request notification that the references cited therein have been considered.

### **Response to rejections**

#### **NEW MATTER**

Claims 37-51 are rejected under 35 U.S.C. 112, first paragraph for lack of written description. The Examiner suggests that claims 37-51 contain new matter because of the recitation in the claims of the phrase "do not comprise a label". Applicants respectfully traverse.

Initially, Applicants submit that the term "do not comprise a label" does not constitute new matter. However, in an effort to expedite prosecution of this case, Applicants have amended the claims 37 and 51 to replace this phrase with the phrase "do not comprise an optical tag". As noted above, support for "optical tag" is found at p. 22, lines 4-25, of the application as filed. Here, the present invention is described and it is noted that the present invention does not rely solely on the use of optical properties. Such optical properties were described in the preceding paragraph and include optical signatures or optical tags. Thus, Applicants submit that the specification provides an adequate written description of that which is claimed such that one of

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ordinary skill in the art would know that Applicants had possession of the invention at the time the application was filed. Applicants respectfully request the Examiner to withdraw this rejection.

In addition, Applicants note that the rejection of claim 38 is moot because the claim has been rewritten in independent form. Accordingly, Applicants respectfully submit that this rejection be withdrawn.

#### VAGUENESS AND INDEFINITENESS

Claim 53 is rejected under 35 U.S.C. 112, second paragraph because it depends from canceled claim 15. In response, Applicants have amended claim 53 to properly depend from claims 52, 54 or 55. Accordingly, Applicants submit that the claim is not vague and indefinite. Applicants respectfully request the Examiner to withdraw the rejection.

#### IMPROPER DEPENDENCE

Claims 38, 39 and 48-50 are objected to under 37 CFR § 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim.

While Applicants respectfully disagree with this assertion, Applicants submit that the rejection is moot in light of the amendment of claims 37. Applicants respectfully request the Examiner to withdraw the rejection.

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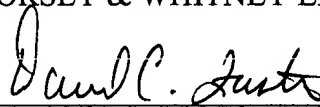
**CONCLUSION**

Applicants submit that the claims amended are ready for allowance and the Examiner is respectfully requested to provide early notification to this effect.

The Examiner is invited to contact the undersigned at (415) 781-1989 if any issues remain.

Respectfully submitted,

DORSEY & WHITNEY LLP

A handwritten signature in cursive script, appearing to read "David C. Foster", is written over a horizontal line.

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